

Food, drugs, medicines and medical appliances are not taxed at the normal rate of 6.25%. These items are taxed at a lower rate of 1%. See 86 Ill. Adm. Code 130.310. (This is a PLR.)

April 7, 2003

Dear Xxxxx:

This letter is in response to your letter dated December 12, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at www.revenue.state.il.us/Laws/regs/part1200/.

In your letter, you have stated and made inquiry as follows:

Thank you for the reply to my letter regarding the collecting of sales tax by AAA. I have thoroughly read the material you sent me and still believe that the sales tax charged there should be at the lower rate.

The first test seems to be whether or not the establishment provides facilities for on-premise consumption of food, or at least that there is an area where the food can be consumed. The store in question has no such facilities. The store also does not have an area common with other retailers of food, and the store is located in a mall where signs are posted that eating and drinking is not permitted in general areas.

The other part of that test indicates that even if the establishment does not provide facilities for on-site consumption, they are to charge the higher rate if the food is made ready to eat without substantial delay. Again, this does not seem to apply to this retailer. The items purchased are bagged and sealed at the point of sale, an indication that the store itself does not expect the purchaser to immediately eat the contents. The other factor is the quantity. Rather large bags are provided for customers' selections. I believe the store's owners would be hard pressed to make the argument that the customer planned on immediately consuming entire pounds of candy.

One sentence in your letter seemed most applicable:

'However, a candy retailer whose gross receipts reflect that a majority of items are sold in bulk, such as boxes of candy should charge the low rate for its bulk sales, although it would charge the full rate for any sales of immediate consumption.'

I am enclosing a sales receipt from a purchase made recently that clearly indicates the item purchased as 'bulk candy'.

In addition, the Illinois Administrative Code states (CH I, Sec 130.310, paragraph 6) states:

‘Retailers who sell food which they do not prepare in any way, are not selling food for immediate consumption, i.e., pre-packaged candy bars, snacks, chips, ice cream, unless that food is to be consumed on the retailer’s premises.’

It seems to me, therefore, that since they do not provide for consuming the candy on premises, they do not prepare the food in any way, and they sell candy in bulk, the sales tax charged should be the lower rate.

I would understand the issue of confidentiality if I were asking for the total receipts of the store. However, I am simply asking for the rate at which they pay the state. As I wrote in my first letter, I am concerned that the store is charging the consumer at the higher rate and paying the state the lower rate, which in effect allows them to charge more to the consumer, pretending it is going to the state. It also seems to border on fraud, since they would then be collecting money in the name of the state, and not paying it to the state.

I am hereby asking for a private letter ruling, in accordance with the regulations of Illinois Department of Revenue Regulations, Part 1200, Section 1200.110. That request, with the necessary information is enclosed with this letter.

All gross receipts from sales of tangible personal property in Illinois are subject to Retailers’ Occupation Tax unless an exemption is specifically provided. Food, drugs, medicines and medical appliances are not taxed at the normal rate of 6.25%. These items are taxed at a lower rate of 1%. See the enclosed copy of 86 Ill. Adm. Code 130.310.

As you can see at Section 130.310(b)(1), “[a] food is any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice.” Products that do not meet the appropriate definitions of food, drugs, medicines and medical appliances, or are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes.

The manner in which food is taxed depends upon the nature of the establishment that is selling the food. Retailers who provide seating or facilities for on-premises consumption of food generally incur tax at the high rate on all food sales (including bulk or grocery type items). However, if establishments sell both food that has been prepared for immediate consumption and bulk or grocery type items and also provide facilities for on-premises consumption, the lower rate of tax may be charged on the bulk or grocery type items only if the dining facilities are physically partitioned from the area where food not for immediate consumption is sold and these facilities utilize a separate means of collection of receipts. See 86 Ill. Adm. Code 130.310(b)(3).

If establishments have no seating or facilities for on-premises consumption of food, the tax rate incurred on food sales is determined by whether the majority (over 50%) are bulk or grocery type sales or are sales for immediate consumption. If more than 50% of all food sales are for immediate consumption, the retailer must charge the high rate on all food sales. If more than 50% of all food sales are bulk or grocery type items, all food sales are taxed at the low rate with the exception of hot

foods, food that has been prepared for immediate consumption, alcoholic beverages, and soft drinks. See Section 130.310(a).

Food prepared for immediate consumption means food made ready by the retailer to be eaten without substantial delay after the final act of preparation by the retailer. It is presumed that retailers who sell food prepared for immediate consumption in individual single-sized servings will sell all such items for consumption without substantive delay. Thus, for example, a retailer whose gross sales receipts are derived primarily from sales of individual fudge pieces, soft pretzels, doughnuts, or cookies prepared in the morning will be subject to the high rate of tax regardless of when during a business day such items are sold and actually consumed. The high rate is applicable to all his sales in this instance, including items sold in bulk. See 86 Ill. Adm. Code 130.310(b)(6). However, a candy retailer whose gross receipts reflect that a majority of items sold are in bulk, such as boxes of candy, should charge the low rate for such sales.

In the circumstance you describe in your letter, the retailer should be collecting the low rate of tax if more than 50% of his sales are bulk. If, however, more than 50% of his sales are sales of candy for immediate consumption, then the retailer should be collecting the high rate of tax on all sales. We are unable to determine from your letter how much of his candy sales are individual or bulk, therefore, we cannot determine the exact rate of tax.

The confidentiality provisions in the Retailers' Occupation Tax Act, 35 ILCS 120/11, prohibit us from disclosing information contained on the sales tax return of a business. It is a criminal offense to disclose this information to you. We have passed your concerns along to the appropriate personnel within the Department.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.